

No. 9(1)-82-6 Lab/11080.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s National Industrial Corporation, G.T. Road, Panipat.

IN THE COURT OF SHRI HARI SINGH, KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 189 of 1981

Between

SHRI JAGAN NATH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S NATIONAL INDUSTRIAL CORPORATION, G.T. ROAD, PANIPAT

Present—

Shri Raghubir Singh, for the workman.
Shir Surinder Kaushal, for the respondent-management.

AWARD

This reference No. 189 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/KNL/53-81/31436, dated 30th June, 1981 under section 10 (i) (c) of the Industrial Disputes Act, 1947 for existing between Shri Jagan Nath, workman and the respondent management of M/s National Industrial Corporation, G.T. Road, Panipat.

The terms of the reference was —

Whether the termination of services of Shri Jagan Nath was Justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties on receiving these references. The parties appeared and filed their pleadings. The case of the workman according to their demand notice and claim statement is that he was the employee of the respondent and drawing Rs 330 per month. The respondent did not write the name of the claimants in their muster roll and the respondent terminated the services of some workers. The claimant supported the case of the other workers and the management terminated the services of the claimant on 2nd March, 1981. The union wrote a letter on 2nd March, 1981 copy to the Labour Inspector and the claimant also set on dharna and dharna continued upto 23rd March, 1981. The settlement under section 12(3) of the Industrial Disputes Act, 1947 was arrived between the parties and the claimant was free to raise the dispute for termination. The respondent terminated the services of the claimants without any notice or chargesheet. The action of the management is illegal and unjustified and he is entitled for reinstatement with full back wages and continuity of service.

The case of the respondent according to written statement is that the workman was taken on trial basis and he worked upto 31st January, 1981 and thereafter he did not turn up and was marked absent and the management treated that he was not interested to give the trial and was not interested to be absorbed with the respondent management. The claimant was involved in beating to the partner of the management along with other workers for which a complaint was duly lodged and action was taken by the police and he was duly prosecuted in the court and being the first offender he was let off with the warning to the effect that his conduct shall remain under watch for a period of one year. There was dharna outside the factory in the month of March, 1981 and some outsiders also supported the workers. The matter was duly conciliated upon and after negotiations, a settlement under section 12(3) of the Industrial Disputes Act, was arrived at. On the demand notice the person who were the employees were taken in employment and their names were specifically mentioned in the settlement itself. In the settlement all the matters stand fully settled and there is no dispute pending and accordingly the dispute of Shri Jagan Nath was also settled. As per record of the management the applicant was in the service for the period from 27th January, 1981 to 31st January, 1981 only for 4 days and thereafter did not turn up to join his duty so the management has every right to terminate the services of a person who has been kept on trial for four days. So the reference may be rejected.

On the pleadings of the parties, following issues were framed

(1) Whether the termination of services of the workman is proper justified and in order ? If not, to what relief is he entitled ?

(2) Relief.

My findings on the issue is as under —

Issue No. 1.—The representative of the respondent argued on this issue that as stated by Shri Vishwa Nath, partner of the respondent factory as MW-1 that he brought the attendance register of the factory in which

the claimant had worked from 27th January, 1981 to 31st January, 1981 and after that he remained absent from duty, and he was marked absent in the register upto 14th February, 1981. There was dispute in the factory and in the dispute they stopped the gate of some workers on which there was a dharna before the factory gate and some outsider also participated in dharna and geared up the union activities. They also raised the demand notice against the respondent and on those demand notice the Labour Officer-cum-Conciliation Officer called the parties and in the conciliation proceedings there was a settlement under section 12(3) of the Industrial Disputes Act, which is Ex. M-1 in which the name of the workmen were given who were employee of the factory and according to this settlement these were taken on duty. The name of the claimant is not mentioned in the settlement, so he was not taken on duty. The claimant was involved in beating to the porter of the management along with other workers for which a complaint was duly lodged and action was taken by the police and being first offender he was let off with the warning in that effect. The workman appeared as WW-1 who has stated that he was getting Rs. 330 per month. He has not stated in his evidence that when he joined the service of the respondent. The claimant has brought another witness Shri Ram Lochal, General Secretary of the union as WW-2 who has not stated any where in the statement that the claimant was the employee of the respondent and when he joined the service of the respondent. So, it is proved on the file that the workman had worked only for 4,5 days in the factory on trial and left his job of his own accord.

The representative of the workman argued that as stated by Shri Jagan Nath, he was the employee of the respondent and drawing Rs. 330 per month. The name was not written in the attendance register and he with other workmen raised the demand, on which the management stopped him at the gate on 2nd March, 1981. After that they sat on dharna before the factory gate and gave the demand notice. He further argued that the General Secretary of the union has come as WW-2 who has stated that he made a complaint to the Labour Inspector on 27th January, 1981 of about twenty workers. The copy of which is Ex. W-1. On this complaint the Labour Inspector inspected the factory and got written six names of the workers in the attendance register. After this complaint the respondent removed six workmen on 2nd March, 1981. On that termination he gave the notice of dharna on 2nd March, 1981 which is Ex. W-3. The respondent removed some other workers and notice was sent to the management which is Ex. W-4 and all the workmen set on dharna. This shows that there was a illegal termination of the claimant and they were terminated only because of their general Demand Notice that their names were not written in the attendance register and they were working for the last one year.

After hearing the arguments of both the parties and going through the file, I am of the view that the claimant has failed to prove his case that he was a permanent employee of the respondent. The claimant was appointed on trial on 27th January, 1981 and worked upto 31st January, 1981 and after that he remained absent from duty and he was marked absent upto 14th February, 1981 and then his name was struck off. So, the respondent has rightly struck off his name and the workman is not entitled for any relief. This issue is decided in favour of the respondent and against the workman.

This be read in answer to this reference.

Dated the 20th October, 1982.

Endstt. No. 2264, dated the 22nd October, 1982

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-6-Lab/11188.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of Haryana Roadways Jind.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 92 of 1980

Between

SHRI BUDH RAM, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, JIND.

Present :

Shri Sagar Ram Gupta for the workman.
Shri A.R. Goel for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his Order No. ID/KNL/16-80/22968, dated 5th May, 1980 under section 1Q(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Budh Ram, workman and the management of Haryana Roadways, Jind. The term of the reference was :—

Whether the termination of services of Shri Budh Ram was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, on the basis of which the following issues were framed :—

- (1) Whether the domestic enquiry conducted by the management is fair and proper ?
- (2) Whether the reference deserves rejection as alleged in para 2 of the preliminary objection of the written statement ?
- (3) As per reference -?

Issue No. 1 was to be treated as preliminary. The management examined Shri Ram Phal, Clerk respondent and Shri Mohinder Pal Singh as their witnesses and closed their case on 3rd March, 1981. The workman did not adduce any evidence and closed his case. I heard the learned representatives of the parties and have also gone through the evidence oral as well as documentary carefully and decide the issues as under :—

Issue No. 1 :—MW-1 Shri Ram Phal produced in evidence the copies of the various documents relating to the charge-sheet, the reply of the workman and the papers relating to the enquiry and other document which have been exhibited as MW-1/1 to MW-1/11. In his cross examination the witness has given out that the copy of the appeal filed before the State Transport Controller bear the date 21st November, 1979. The General Manager sent his comments on 4th February, 1980 but the State Transport Controller has not fixed any date of hearing in this appeal. He has further given out that there is no noting on the file by which it can be said that the General Manager had considered the reply of the show cause notice submitted by the workman which is Ex. MW-1/9 prior to passing further order and the show cause notice is Ex. MW-1/8 was in cyclostyled form and the same was issued on the basis of the order appearing beneath the report of the Enquiry Officer Ex. MW-1/7 in the words "Issue show cause notice of termination of services" and likewise on receipt of the complaint from the Inspectors the General Manager passed the order "issue chargesheet" and after receiving the reply to the charge-sheet the General Manager passed the order in the words "Shri Mohinder Pal Singh S.S. to enquire and report" showing that the General Manager did not apply his mind.

MW-2 Shri Mohinder Pal Singh who was appointed as Enquiry Officer deposed that he was appointed Enquiry Officer,—vide Ex. MW-1/5. He issued notices to the parties for appearance on 29th January, 1979, 21st February, 1979 and 17th April, 1979 but none of the parties appeared on these dates. On 17th May, 1979 the parties appeared and he explained the procedure of the enquiry to the parties and recorded the statement of the complainant in the presence of the workman. Ex. MW-1/6 bears his signatures. The workman cross-examined the complainants. Then after the statement of the workman was recorded. The complainant cross-examined workman and then after he asked some questions from the workman. The workman produced his witness in his defence. He put certain questions to the defence witness to satisfy himself whether the witness was genuine or false. Then after he dictated his findings and signed the typed findings after reading which are exhibited MW-1/7. In his cross examination he gave out that the enquiry proceedings were completed in one sitting and there was no Presenting Officer on behalf of the management and the job of presenting the case was done by the Inspectors who were witnesses/complainants. He did not know whether the copy of the complaint of the Inspector was supplied to the workman before the start of the enquiry. He admitted as correct that the workman was cross examined by the witnesses of the management. Then again said that the Inspector did not cross examined the workman witness but he who had asked question from him.

From the statements of the witnesses recording during the course of enquiry it is evidently clear that the workman has not charged the fare from the passengers who were found without tickets and the Inspectors had not put any suggestion to the workman in his cross-examination that he had taken the fare and had not issued the tickets but to a question the workman had replied that the passengers had consumed liquor and as such it took time in issuing tickets to them. Moreover the workman has produced one independent witness Shri Ishwar Singh S/O Shri Giani Ram r/o V. Italkhurd who had travelled in the bus from Uchana to Bhanbauri who had deposed that the bus was overload and the light was dim and the conductor was issuing tickets while taking the fare at the same time. The Enquiry Officer put as many as 14 questions to this witness by way of cross-examination. The findings of the Enquiry Officer do not disclose that he considered the statement of the defence witness and he simply held that the charge-sheeted workman has failed to prove that he had not taken the fare from the passengers while there is sufficient evidence on the file that the workman had not taken the fare from the passengers who were without tickets. The findings are perverse and not based on the evidence on the enquiry file. The Enquiry Officer has

also acted as judge and the prosecutor. The Enquiry Officer has proceeded to cross-examine the defence witness and proceeded to ascertain incriminating information from the prosecution witness which he did not disclose by putting leading questions. The Enquiry Officer cannot be said to act impartially and the bias proved against him and the enquiry cannot be held to be fair and in accordance with the principles of natural justice.

The Enquiry Officer has failed to consider the relevant evidence in holding the charges proved and hence the findings are held to be vitiated while it is true that Labour Court is not entitled to sit in appeal over the findings recorded in the domestic enquiry unless the domestic enquiry is held defective but it has jurisdiction to interfere with the findings recorded in domestic enquiry if those findings are perverse and if no reasonable person could have arrived at the conclusion on the material present on the record. The authorised representative of the workman has cited several case laws in support of his contention on the above points such as 1981 Lab. I.C. 1012, 1981 Lab. I.C. NOC 127, 1978 Lab. I.C. 1106, 1982 Lab. I. C. 261. It has also been established from the statement of the Enquiry Officer who appeared as MW-2 as well as from the enquiry proceedings that the Enquiry Officer was biased and has acted both as a judge and prosecutor which is also clear from the findings given by him which are not based on the evidential material present before him. I accordingly decide the issue against the management.

Issue No. 2.—There is evidence that the workman has preferred an appeal before the State Transport Controller which is dated 21st November, 1979 as has been admitted by the management witness MW-1 in his cross-examination but the State Transport Controller had not fixed any date in that appeal. The adjudication of the present dispute by this court is an alternative remedy open to the workman and he is competent to avail of any of the two either by way of raising an industrial dispute and getting the same referred for adjudication to a Labour Court or by way of appeal before the State Transport Controller. No proceedings are conducted before the State Transport Controller nor the workman is pursuing of the same before him. I therefore hold that the reference is not liable to be rejected on the ground that workman has not availed of the departmental remedy before going for a reference for adjudication of the same before this court. I accordingly decide issue No. 2 against the management.

Issue No. 3.—In view of my findings on issue No. 1 while it has been held that the findings of the Enquiry Officer are perverse and not based on the material on record before the Enquiry Officer it has been held by the Hon'ble Kerala High Court in 1982 Lab. I. C. page 261 relying on the Supreme Court decision reported in 1973 LIC 851 and 1975 Lab. I.C. 144 that if the findings are found perverse there was no need to give another opportunity to the respondent management to supplement or improve upon the evidence adduced by them in the enquiry. I also don't find if the management had any other means to prove the charges levelled against the workman on the basis of which the management has terminated the services of the workman. I accordingly hold that the termination of the workman on the basis of the enquiry which has been held perverse is neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated the 22nd October, 1982.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 2326, dated the 25th October, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(182-6Lab./11253.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Sadhu Forging Pvt. Ltd., Plot No. 140, Sector 24, Faridabad:—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 311/1981

between

SHRI SATBIR SINGH WORKMAN AND THE MANAGEMENT OF M/S. SADHU FORGING
PRIVATE LIMITED, PLOT NO. 140, SECTOR-24, FARIDABAD

Present—

Shri Manohar Lal for the workman.

Shri R. C. Sharma for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Satbir Singh and the management of M/s. Sadhu Forging Private Limited, Plot No. 140, Sector-24, Faridabad, by order No. ID/FI/116/81/47688, dated the 17th September, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1946 :—

Whether the termination of services/dismissal of Shri Satbir Singh was justified and in order ? If not, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my order, dated the 24th November, 1981 :—

Whether the termination of services/dismissal of Shri Satbir Singh was justified and in order ? If not, to that relief is he entitled ?

And the case was fixed for the evidence of the management, who examined Shri Subhash Chand, Time Keeper of respondent as MW-1. The workman examined himself as MW-1 and Shri Nanak Chand, President, WW-2. Arguments were heard.

MW-1 deposed that he was in the service of the management since 1980. The workman was appointed,—*vide* Exhibit M-1. He was issued warning letter No. M 2 which was received by him. Factory was situated within the premises of Sadhu Steel Forging Industries. The workman of the later factory went to strike. Their workers also went on strike but there was no demand of the workman. The management issued letter Exhibit M-3 to the workmen. A. D. Card was Exhibit M-4. Deputy Labour Commissioner, Haryana sent letter Exhibit M-5 to the management. Some of the workmen assumed duty while other did not come. Letter Exhibit M-6 was sent to the workmen, postal receipt of which was Exhibit M-6 and A. D. Card was Exhibit M-8. The workmen did not report for duty even thereafter. He was sent letter Exhibit M-9. Postal receipt was Exhibit M-10 and the undelivered envelope was Exhibit M-11. He further deposed that he had brought attendance register and Exhibit M-12 was extract of the same, from April to June. The service of the workman was not terminated. In cross-examination, he replied that there was no lock out in the factory. He denied the suggestion that the workman had reported for duty but was not allowed by the management. In re-examination he stated that the factory started full work on 22nd May, 1981.

WW-1 deposed that he was working in the factory for the last two and a half years. There was registered trade union in the Factory. He was a member of the union. He had received Exhibit W-1 from the management on 3rd of the March. He reported for duty on the next day but was not allowed. He made complaint Exhibit W-2. In cross-examination, he replied that he was on strike from 6th April, 1981. Strike was called off on 21st May, 1982. He had gone for duty on 23rd May, 1981. He was at Baland Shahar because he was there during those days. He came to Faridabad after 23rd May, 1981. Cause of delay of complaint Exhibit W-2 was that the management was giving false promises for taking him on duty. He denied the suggestion that Exhibit W-2 was forged document. He admitted his address on Exhibit M-11 to be correct. He did not know if Sadhu Steel Industries and Sadhu Forging were separate industries. WW-2 deposed that he was President of the union. The management had declared lock out. He had gone to the Deputy Labour Commissioner for re-opening of the factory. It was decided that all the workers will report for duty within 15 days. Some of the workers had gone to their homes. In cross-examination, he admitted that the meeting was held before the Deputy Labour Commissioner, Faridabad. In the meeting, representative of the union and the management were present. He had received Exhibit M-5 after about a week of the meeting. He denied the suggestion that they called off strike after the settlement. The management had made the selection of the workers for re-joining the duty. About 30-40 workers were not taken on duty. He did not know the fate of workers who had gone to their homes.

The learned representative of the management argued that the workmen had resorted to an illegal strike. There was a settlement and the workmen were given time for duty but they did not report for work. On the other hand, learned representative for the workman argued that there was no delay on the part of the workmen. He argued that the termination of service amounted to retrenchment.

I have gone through the file. According to the appointment letter Exhibit M-1, the workman was appointed on 3rd October, 1979. He was informed,—*vide* Exhibit M-6 equal to Exhibit M-1 regarding his absence. The letter was received by him,—*vide* Exhibit M-4, A. D. Card His name was struck off,—*vide* Exhibit M-7, dated the 5th June, 1981 on account of absence. The letter was sent by registered post but the same was received back undelivered. According to settlement Exhibit M-5, the workmen had to report for duty with 15 days, i. e. upto 5th May, 1981 but the workmen did not report for duty upto 27th May, 1981 as was clear from letter Exhibit W-1 which was received by him at his village address. The management has justified in treating him absent from duty.

Now the law about striking of name was set at rest by their Lordships of the supreme Court in Smt. Santosh Gupta *versus* State Bank of Patiala, 1970-II-LLJ-page 72 and L.R. D. Sourza *versus* Executive Engineer, Southern Railway 1982-I-LLJ-page 330. Their Lordships reiterated law laid down in D. C. M. *versus* Shambhu

Nath Mukerjee that striking of name amounted to termination. Termination of any kind except categories excluded from the definition of Section 2(oo) amount to retrenchment. In the case in hand, the workmen had about two years service at his credit. It was case of both the parties that he was not paid any notice pay or retrenchment compensation as provided in Section 25F of the Industrial Disputes Act, 1947. In view of above, termination amounted to retrenchment and was had in law for non-compliance of provision of Section 25-F. The workman was entitled to this reinstatement with full back wages. I award accordingly

Dated the 13th October, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 113, dated the 28th October, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment, Departments Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9 (1) 82-6Lab/11256.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Indication Instruments Pvt. Ltd., Plot Nos. 17-18, Sector 4, Ballabgarh: —

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 365/1981

between

SHRI RANJIT SINGH, WORKMAN AND THE MANAGEMENT OF M/S. INDICATION INSTRUMENTS PRIVATE LIMITED, PLOT NOS. 17-18, SECTOR-4, BALLABGARH

Present:—Sh. G. S. Chaudhry, for the workman.

Shri R. C. Sharma, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Ranjit Singh and the management of M/s Indication Instruments Private Limited, Plot Nos. 17-18, Sector-4, Ballabgarh, by order No. ID/FD/106/81/54480, dated 4th November, 1981, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ranjit Singh was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties, who appeared and filed their pleadings. On the pleadings of the parties, the issues under reference was put under trial by my order, dated 19th January, 1982. The management examined Shri Ram Avtar Gupta, Supervisor as MW-1, Shri Pardeep Aggarwal, Time Office Incharge as MW-2, Shri P.C. Gulgulia, Cashier as MW-3 and Shri Rajinder Parshad, Workman as MW-4. The workman examined himself as his own witness. Arguments were heard.

MW-1 deposed that he was working in the factory for the last five years. The concerned workman was appointed as learner and then semi-skilled in temperature gauge assembly department under his supervision. The management asked for report about the work of the concerned employee. He sent report copy of which was Ex. M-1. The workman had come to the factory on 20-21 July for submitting medical certificate. Thereafter he came on 27-28. He was not taken on duty by him. In cross examination, he replied that the workman was appointed for 6 months as learner. He admitted that when he learned job he was appointed, semi-skilled 'A', workman. He had told that his work was not satisfactory. He denied that the workman had not come to the factory on 20-21 July. The workman had no fitness certificate when he was sent to the time office. He denied the suggestion that comments on Ex. M-1 was given later on. MW-2 deposed that the appointments letter were

Ex.M-2 and M-3 and medical certificate Ex.M-4 was received. The workman had come with fitness certificate on July 28. He was told that his service was terminated. He was offered termination letter but he refused to receive the same. Copy of the same was Ex.M-5. A account of the workman was already ready and clearance slip was Ex.M-6. Voucher was Ex. M-7. The Cashier was asked to pay him but the workman refused. Letter for extension of probation was Ex.M-8. In cross-examination, he replied that he did not know that from which date his provident fund was collected. Learner was paid stipend but it was not shown as stipend in the wages register. He admitted that Ex. W-1 envelope was of the company. On Ex- M-7 appeared his initial at point 'A'. He denied the suggestion that no payment was offered to the workman. He denied the suggestion that the workman had come on 4th August, 1981 with fitness certificate. MW-3 deposed that Ex.M-7 was prepared by him. He was ordered by MW-2. The workman had refused to receive the amount in the presence of Shri Jag Singh and Shri Rajinder Parshad. They had signed at point 'C' and 'D' on Ex.M-7. He had brought ledger and journal which showing the account of voucher in the unpaid account copy, of which was Ex.M-9 and entry in the said ledger was Ex.M-10. In cross-examination, he stated that entry on page 72 of the ledger showed Rs. 779/15. Provident fund and E.S.I. account was separate. The ledger stood paged and sheet could be added to the ledger. He denied that Vouchers were prepared lateron. MW-4 deposed that he knew the concerned workman. He came on 28th July, 1981 at 9.00 A.M. He was offered amount but refused to receive. In cross-examination he replied that he was a co-workman. He was called by the Accountant and had signed as a witness. He denied that he had signed it sater on.WW-1 deposed that he was appointed on 21st July, 1980 as learner. Later on he was promoted,—vide Ex.M-2 and M-3. He received letter Ex.M-8. There was nothing adverse against him. He had fallen sick and got treatment from E.S.I. He had sent mdical certificate to the management by post. He had sent application Ex.W-2 and later on he sent certificate by registered post. Postal receipt was Ex.W-3. He had received letter Ex. W-5 from the management in envelope Ex.W-1. When he went to the factory with fitness certificate he was not taken on duty. No notice pay or compensation was paid to him. In cross-examination he replied that he was sick with fever. He had typhoid. He used to go daily to the Dispensary. His village was at a distance of two milcs. He had received conciliation report Ex. M-11. He denied the suggestion that he did not go to the factory on 28th July. He recognised the signature of a supervisor on Ex.M-12 and M-13.

In argument the learned representative for the management argued that the workman was not permanent¹ as stated in claim statement. He was a probationer and his service was terminated on the expiry of probation period because his work was not satisfactory. Period of learning was not to be counted towards his service. He cited 1976-Lab. I.C. page-1.

On the other hand, learned representative for the management argued that the workman had put in one year service without any break. His termination was illegal as he was under treatment of E. S. I. The fact of fitness^{ss} was within knowledge of the management. He cited 1980-II-LW page 72 and 1980 Lab-I-C. page 111. In reply the learned representative for the management contended that plea of retrenchment was not available in the present case. He cited 1982-I-LLJ page 362.

I have gone through the documents and find that the workman was appointed as a learner from 21st July 1980 at a stipend of Rs. 200/- per month. He was appointed S.S.A. worker with effect from 21st January, 1981, at Rs. 260/-per month as probationer, for three months. His period of probation was extended by another three months at the discretion by the management. It was given in the appointment letter clause-4(v) probation could be extended for continued low efficiency or unsatisfactory working. The probation period was extended,—vide Ex. M-8 letter, dated 21st April, 1981. It was also signed by the workman. Ex.M-1 suggest that the work of the workman was not up to the mark as given by Shri R.A. Gupta. Voucher Ex. M-7 bears the detail of amount showing wages notice pay and other amount payable to the workman. It contained signatures of two witnesses included that of MW-4. In the conciliation report Ex.M-11 is the same stand taken by the management.

It was a case of termination of probationer. The workman was neither permanent nor he was in the category of temporary workers. It was held in 1980-II-LLJ-page 56 that "It is manifest that even misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed even so as under the terms of appointment of the respondent such a power flowed from contract of service it could not be termed as penalty or punishment."

It was also held in 1980 I LLN page 468 that "Once the employer is not satisfied with the conduct of the employee, it is well open to him to dispense with the services during probationary period." As regards contention of the learned representative for the workman that the workman was sick and there fore his services could not be terminated during the period of his treatment under E.S.I. I am of the opinion that this contention had no force because in the case of probationer his service could be terminated at the expiry of probationary period under contract of service. Plea about payment of retrenchment compensation, it was proved by the management that an offer was made to the workman but he refused to receive the same. The amount was shown as unpaid in the cash register. In 1982-I-LLJ page 362 it was held in the facts and circumstances of the case the offer made by the company for purpose of S.25-F was definite and genuine and it complied with the requirements of the Act. All that need be ensured is a bona fide offer to the worker as part of the same transaction of either retrenching him or discharging him or dismissing him."

In this circumstance, I find no merits in the case and find that the termination of service was in order. The workman could collect his full and final account from the management. He was not entitled to any other relief.

Dated the 12th October, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst No. 1116, dated the 28th October, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1) 82-6 Lab/11258.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Saraswati Sugar Mills, Yamuna Nagar.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 280/1981.

between

SHRI ASHOK KUMAR, WORKMAN AND THE MANAGEMENT OF M/S SARASWATI SUGAR MILLS, YAMUNA NAGAR

Present:—

Shri Rajeshwar Nath, for the workman.

Shri R. L. Gupta, for the management.

AWARD

The Government of Haryana referred the following dispute between the workman Ashok Kumar and the management of M/s. Saraswati Sugar Mills, Yamuna Nagar, by order No. ID/YMN/55/81/38497, dated 20th August, 1981, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service/dismissal of Shri Ashok Kumar was justified and in order? If not, to what relief is he entitled?

Notices of reference were sent the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my order, dated the 15th February, 1982:—

- (1) Whether the workman resigned his job of his own? If so, to what effect?
- (2) Whether the resignation was obtained under duress and force.
- (3) Whether the termination of service/dismissal of Shri Ashok Kumar was justified and in order? If not, to what relief is he entitled?

The management was called upon to lead evidence on issue No. 1 and 2 who examined Shri Man Mohan Singh, Cane Manager as MW-1 and Shri Satya Pal, Time Keeper as MW-2. The workman examined himself as his own witness. Arguments were heard.

Issue No. 1 & 2.

Issue No. 1 and 2 are inter-relative and therefore, these are decided together.

MW-1 deposed that the workman was a seasonal clerk. He had submitted his resignation Ex. M-1. It was recommended at point 'A' by the witness. The General Manager accepted the resignation which was at point 'B'. He further deposed that he had enquired from the workman the

reasons of his resignation. The workman had replied that he was to start his own business. Information for accepting of resignation was conveyed to the workman,—vide Ex. M-2. He had received copy of the same. U. P. C. receipt was Ex. M-3. In cross examination, he replied that the workman had brought Ex. M-1 to him. He was in service prior to 1979. There was no complaint regarding his work. He denied the suggestion that the workman was forced to write resignation in his office under threat of a police case against him. There was none alongwith the workman at the time of submission of his resignation. The resignation was submitted at about 9.00 A. M. He had not received representation from the workman on 7th March, 1981, though the General Manager had informed him about this fact. He had informed the General Manager that the workman had resigned of his own will. There was no duress in the act. MW-2 deposed that the workman was marked presence upto first half of 28th February, 1981. The workman used to initial in the attendance register. Photo copy of the attendance register was Ex. M-4. In the month of March, 1981, the words "resignation accepted,—vide letter No. CS/295/6985, dated 4th March, 1981" were shown, copy of which was Ex. M-2. In cross-examination, he replied that the workman was seasonal permanent.

WW-1 deposed that he joined as cane clerk on 18th November, 1979. He had gone 15 days leave and after 3-4 days of his return, he was called by the Cane Manager through Shri Nar Singh Shift Incharge. When he reached, Shri Anand Parkash Jain and Shri Nar Singh were present with the Cane Manager. Shri Nar Singh closed the door and forced him to write resignation. He enquired about the resignation. Shri Jain caught hold of him and forced him to write resignation. He wrote the same under pressure. Next day when he went for duty along with his father he was not taken on duty. He sent complaint to the Labour Authorities and the General Manager on 6th. He could not tell as to why he was forced to write resignation. In cross examination, he replied that his father was running a shop at Naraingarh. He also worked at the shop. He admitted that Ex. M-1 was copy of resignation. He denied the suggestion that he had received intimation of acceptance of the resignation. He admitted that he had not mentioned the fact in his complaint about going to General Manager along with his father. His complaint was Ex. M-5. The delay in the filing of complaint was that he was not in senses. He admitted that he had no enmity with any body. He on Court question, replied that he had not allowed the shift incharge to sleep in his quarter, therefore, he forced him to submit resignation.

The learned representative for the management argued that there was no complaint made by the concerned workman about the duress in the resignation. He drew towards the discrepancy in the claim statement and demand notice. On the other hand, the learned representative for the workman argued that the workman was forced to write resignation which was never accepted and had not become operative.

I have gone through the documents on file and find that the resignation Ex. M-1 was in the hand of the workman and was dated 1st March, 1981. The Cane Manager had written that the workman had submitted his resignation which may be accepted and one month notice salary may be deducted from him under rules. Intimation of the resignation was sent,—vide postal certificate Ex. M-3. In the attendance register, the fact of resignation appeared in the attendance column. As regard the complaint, the workman had written that Shri Nar Singh Shift Incharge had taken him to the Cane Manager where Shri Anand Parkash Jain was present. The later caught hold of him and handed him pen and paper to write resignation. The Cane Manager had intimidated him to implicate in some false case. In the demand notice, the workman stated that Shri Anand Parkash Jain Cane Office Incharge forcibly obtained from him resignation letter by threatening to involve in the criminal case. It was also mentioned in para No. 5 of the demand notice Shri Anand Parkash Jain was annoyed with him because he was not yield to play to his tunes by agreeing to be an accomplice in the mal practices. The workman stated that Shri Nar Singh had informed him that he was called by the Cane Manager. On reaching there he found Shri Nar Singh and Anand Parkash Jain sitting with the Cane Manager. It was further stated that Shri Nar Singh bolted the door and Shri Jain forced him to write resignation. He had replied that he had no enmity with any body. After the statement when a Court question was put, he showed grievance from the shift incharge. Therefore, I find that he has changed his version all the three times i.e. at the time of complaint, demand notice and his statement. In this circumstance, I find that the workman submitted his resignation of his own will and later on changed his mind and made complaint against the management. I do not find any merits in the contention of the workman. Therefore, I find that there was no duress in the resignation rather it was a voluntary act. The workman was not entitled to any relief.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

Dated the 19th October, 1982.

Endst. No. 1118, dated, the 28th October, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.